
(2020) 02 AFT CK 0004

In the Armed Forces Tribunal

Case No : Original Application No. 714 Of 2018, Miscellaneous Application No. 1811 Of 2019

Resham Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0004

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : I S Yadav, JS Yadav

Final Decision : Disposed Of

Judgement

MA 1811/2019

1. Vide this application, respondents seeks condonation of delay of 120 days in filing reply to which, there is no objection from the opposite side.

2. In view of the averments made in the application, delay of

120 days in filing counter affidavit is condoned. Same is taken on the record. MA stands disposed off.

OA 714/2018

1. Rejoinder has been filed.

2. Arguments heard.

3. Vide separate order, OA stands disposed off.

1. The applicant, having been found medically and physically fit. was enrolled in the Indian Army on 28.05.1979 and was commissioned as 2/LT on 13

Dec.1997. On superannuation, he was discharged from service on 31.03.2017 in

low Medical Category S1H1A2P2E ""PRIMARY

HYPERTENSION.' The Release Medical Board (RMB) assessed the applicant's disability 'PRIMARY HYPERTENSION Â©30% composite for

life and accepted the same as 'aggravated by military service. However, the claim for disability pension was rejected by the ADGPS by declaring the

same to be 'neither attributable to nor aggravated by military service (NANA). First and Second appeal preferred by the applicant were rejected vide

letter dated 24.05.2017 and 10.01.2019 respectively.

2. It is submitted by the learned counsel for the applicant that once the release board assessed the applicant's disability as aggravated by military

service, interference by administrative authorities is against the judgment of the Hon'ble Supreme Court given in the matter of Ex Sapper Mohinder

Singh Vs. Union of India and Another'.Civil Appeal No.164 of 1993 (arising out of SLP No. 4233 of 1992)] decided on 15.01.1993 and other rulings

also.

3. Per contra, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Competent Authority

found the disability ""Neither Attributable to Nor Aggravated by Military Service"".

4. Having heard learned counsel on both sides, we are of the view that the case in hand is squarely covered by the decision in Ex Sapper Mohinder

Singh (supra), wherein the Hon'ble Supreme Court observed as under

â??â?|.xxx ... From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us

is in a very narrow compass viz., whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of

the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension,

or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of

Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch

dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher

Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Corps.

5. Subsequent to this, the Integrated HQ of MoD (Army) issued letter dated 30.11.2016, which states, ""These alterations in the findings of IMB/RMB

by MAP (PCDA(P) without having physical examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme

Court has ruled that the Medical Board which has physically examined should be given due weightage, value and credence."" It further asks

Command Headquarters to instruct all Record Offices under their control to withdraw unconditionally from such cases, notwithstanding the stage

they may have reached and such files be processed for sanction"".

6. In light of the judgment of the Hon'ble Supreme Court in Ex Sapper Mohinder Singh (Supra), we are satisfied that the claim for disability pension

was wrongly interfered with by the Administrative Authority. As per the findings of Release Medical Board, the applicant's disability was held

aggravated by physical & mental stress and strain of military service and is, therefore, entitled for disability pension.

7 Consequently, the OA is allowed and the impugned order rejecting the claim of the applicant for disability pension is set aside. We hold that applicant

is entitled to disability element of pension from the date of his retirement, i.e.. 31.03.2017 @ 30% for life, which is to be broad-banded to 50% in light

of the judgment of the Hon'ble Supreme Court in Union of India and Ors. Vs. Ram Avtar [Civil Appeal 418 of 2012] decided on 10th December, 2014.

8. Accordingly, the respondents are directed to release the arrears within a period of four months from the date of receipt of copy of this order. failing

which, the arrears shall carry interest at the rate of 6% per annum

9. OA stands disposed of in the above terms with no order as to costs.